No. 25-3099

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

IN RE AMAZON.COM, INC.,

AMAZON.COM, INC.,
Defendant-Petitioner,
v.
UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, SEATTLE
Respondent,

ELIZABETH DE COSTER, *et al.*,
Real Parties in Interest,
(No. 2:21-cv-00693-JHC)

DEBORAH FRAME-WILSON, *et al.*,
Real Parties in Interest,
(No. 2:20-cv-00424-JHC)

CHRISTOPHER BROWN, *et al.*,
Real Parties in Interest.
(No. 2:22-cv-00965-JHC)

ON PETITION FOR A WRIT OF MANDAMUS TO THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON
NOS. 2:21-CV-00693-JHC, 2:20-CV-00424-JHC, AND 2:22-CV-00965-JHC; HONORABLE JOHN H. CHUN

BRIEF OF AMICI CURIAE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, CALIFORNIA CHAMBER OF COMMERCE, AND BUSINESS ROUNDTABLE IN SUPPORT OF GRANTING AMAZON.COM, INC.'S PETITION FOR WRIT OF MANDAMUS

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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9th Cir. Case Number(s) 25-3099

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INTRODUCTION AND SUMMARY OF ARGUMENT

The attorney-client privilege ensures that communications between clients and their attorneys remain confidential, thus fostering full and frank disclosure. The privilege is especially important to American businesses, which rely on counsel to help navigate myriad compliance and regulatory issues. The district court's decision threatens this privilege in two ways.

First, it limits the ability of litigants to contract around the default waiver rule in Federal Rule of Evidence 502 ("Rule 502"). *Second*, it misinterprets the default rule by holding that even a mistaken disclosure of clearly privileged material waives the privilege, even if the producing party has a reasonable process in place and promptly seeks to claw back the material after discovering the disclosure. The district court thus effectively restored the "strict responsibility" regime that Congress abrogated in 2008 with Rule 502.

I. Historically, the "strict responsibility rule" penalized inadvertent disclosures by holding that *any* disclosure effected a

waiver of the privilege. This rule increased litigation costs, burdened courts, and chilled full and frank discussions between clients and counsel. These costs were exacerbated in the modern e-discovery context, which involves review and production of millions of pages of documents. In 2008, Congress replaced the "strict responsibility" regime with Rule 502. That Rule allows parties to contract around the default rule and adopt a no-waiver agreement, reducing litigation costs and promoting efficient information exchange. It further provides a default rule that inadvertent disclosure does not constitute a waiver if reasonable steps are taken to prevent and rectify the error.

II. The district court improperly prevented the parties from using Rule 502(d) to contract around the default rule. Both the Electronically Stored Information ("ESI") protocol and the protective order protected against waiver of privilege, regardless of whether documents were reviewed for privilege before production. The district court misinterpreted these agreements, particularly a savings clause in the protective order, and applied flawed logic to

contravene the plain meaning of the text. Courts should interpret such agreements to safeguard privileged communications and avoid waiver due to inadvertent disclosure.

III. The district court further erred by misapplying the default rule under Rule 502(b). If due to distraction, fatigue, or some other reason, a reviewer mistakenly marks a document not privileged, that error should not result in waiver. But the district court treated Amazon.com, Inc.'s ("Amazon") human error as intentional, ignoring the reasonableness of Amazon's review process and its prompt efforts to rectify the mistake. This interpretation effectively reinstates the "strict responsibility" standard that Rule 502 was designed to eliminate. Reasonable precautions and prompt corrective actions should protect against waiver, preserving the integrity of the attorney-client privilege in the context of modern e-discovery.

Amici thus urge this Court to GRANT mandamus and REVERSE the district court.

ARGUMENT

I. CONGRESS ADDED RULE 502 TO THE FEDERAL RULES OF EVIDENCE TO ABROGATE THE HISTORICAL "STRICT RESPONSIBILITY" RULE FOR WAIVER.

The attorney-client privilege is critical to American businesses. Broad rules of waiver, such as the historical rule of "strict responsibility," strip litigants of the benefits of the privilege whenever a document is inadvertently produced, no matter the reason. Today, the risk of inadvertent disclosure under such a regime is acute, as e-discovery has become the norm and productions often involve millions or tens of millions of pages. In 2008, Congress addressed these challenges by adding Rule 502, which replaced the "strict responsibility" rule with a reasonableness analysis and allows parties to contract for a no-waiver rule. When properly interpreted and enforced, Rule 502 protects the attorney-client privilege and reduces the burden of complex litigation.

A. The "strict responsibility" approach to waiver imposes significant costs on litigants and courts.

The attorney-client privilege is the oldest privilege at common law. *See Berd v. Lovelace*, 21 Eng. Rep. 33 (Ch. 1577). "[R]ooted in

the imperative need for confidence and trust," *Trammel v. United States*, 445 U.S. 40, 51 (1980), the privilege plays a vital role in "the proper functioning of our adversary system of justice," *United States v. Zolin*, 491 U.S. 554, 562 (1989). The privilege recognizes that a lawyer must "know all that relates to the client's reasons for seeking representation if the professional mission is to be carried out," *Trammel*, 445 U.S. at 51, implicating the ethical obligation to provide "candid advice" to clients, Model Rules of Prof'l Conduct R. 2.1 (Am. Bar Ass'n 2024). The privilege thus facilitates "full and frank communication between attorneys and their clients," *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981), by incentivizing clients to "make full disclosure to their attorneys," *Fisher v. United States*, 425 U.S. 391, 403 (1976). The privilege ultimately "promote[s] broader public interests in the observance of law and administration of justice." *Upjohn*, 449 U.S. at 389.

The policy goals of frank disclosure, well-informed advice, and legal compliance are especially important in the corporate context. *See id.* at 392. In fact, "corporations, unlike most individuals,

'constantly go to lawyers to find out how to obey the law,'" because complex regulations do not make "compliance with the law … an instinctive matter." *Id.* (citation omitted). The attorney-client privilege incentivizes corporate officers to seek legal advice by shielding these communications from disclosure. *See* Tom Spahn, *Corporate Attorney-Client Privilege in the Digital Age: War on Two Fronts?*, 16 Stan. J.L. Bus. & Fin. 288, 302 (2011). This advice-seeking benefits more than just the corporation and its investors: the justice system and society likewise benefit when corporations receive and follow sound legal advice. *See id.* at 309. Conversely, society is harmed by a rule discouraging corporations from disclosing negative information to their attorneys or discouraging attorneys from communicating unwelcome advice. Waiver of attorney-client privilege over sensitive communications is thus a serious concern.

A century ago, the "traditional approach" to waiver was one of "strict responsibility." *See* Ido Baum, *The Accidental Lawyer: A Law and Economics Perspective on Inadvertent Waiver*, 3 St. Mary's J. Legal Mal. & Ethics 112, 128 n.51 (2013). "[A]ny accidental

disclosure" was "considered a waiver of the privilege." *Id.* at 128. Under this approach, as under any "strict liability regime," "activity levels will be restricted; the free exchange of information between the client and the lawyer will be limited as if it were an environmentally hazardous activity, such as operation of a nuclear power plant." *Id.* at 129 & n.57 (citing Richard Posner, *Economic Analysis of Law* 228 (8th ed. 2011); Steven Shavell, *Foundations of Economic Analysis of Tort Law 196* (2004)). The possibility of inadvertent waiver leads clients to shy away from disclosing "damaging information," thereby precluding lawyers from providing "fully informed legal advice." *Fisher*, 425 U.S. at 403.

Courts and academics alike have recognized that broad waiver rules are bad policy for several reasons: they increase litigation costs, increase the burden on courts, and undermine confidence in the privilege. *See* Richard L. Marcus, *The Perils of Privilege: Waiver and the Litigator*, 84 Mich. L. Rev. 1605, 1608–16 (1986); *accord Hewlett-Packard Co. v. Bausch & Lomb, Inc.*, 115 F.R.D. 308, 310 (N.D. Cal.

1987); *Allen v. W. Point-Pepperell Inc.*, 848 F. Supp. 423, 429 (S.D.N.Y. 1994).

1. "The risk of waiver can lead to the expenditure of extraordinary amounts of energy (and money) to avoid waiver, particularly in discovery." Marcus, *supra*, at 1609. In *Transamerica Computer Co. v. International Business Machines Corp.*, 573 F.2d 646 (9th Cir. 1978), for instance, the court had ordered IBM to produce seventeen million pages of material within ninety days. Marcus, *supra*, at 1609–10.

> IBM thereupon mounted what the Ninth Circuit called a 'herculean effort' to cull privileged items from this mass of material…. Having located seemingly privileged documents, [hired] reviewers would alert a lawyer, who would make an initial examination. If the document seemed privileged, it would be passed along to another lawyer who would determine whether it was wholly or partly privileged, in which case a partly masked copy had to be made and returned to the original location of the document. Finally, IBM stationed a lawyer … in the document production room to try to catch any privileged documents that had slipped through.

Id. at 1610 (footnotes omitted). Despite these "herculean" efforts, IBM inadvertently produced 1,138 privileged documents. *Transamerica*, 573 F.3d at 650. As this example illustrates, the risk

of waiver compels companies to invest enormous resources to protect the privilege—even though such efforts cannot prevent disclosure of *every* privileged communication. *See* Wesley M. Ayres, *Attorney-Client Privilege: The Necessity of Intent to Waive the Privilege in Inadvertent Disclosure Cases*, 18 Pac. L. J. 59, 76 (1986).

Beyond simply wasting resources, the imposition of draconian discovery costs to protect privilege incentivizes parties to "use discovery as a weapon to achieve unfair results." George Shepherd, *Failed Experiment:* Twombly*,* Iqbal*, and Why Broad Pretrial Discovery Should Be Further Eliminated*, 49 Ind. L. Rev. 465, 467 (2016). Plaintiffs file "frivolous suits" in the hope of achieving "lucrative settlements" by driving up the defendants' litigation costs. *Id.* The needless increase in litigation costs may be beneficial to lawyers, but it is a burden on parties and deadweight loss to society.

2. Resolving disputes about privilege can be time-consuming for courts regardless of waiver rules. "But broad rules of waiver add substantially to the effort required by these claims of privilege

because they force the parties to fight about things they would otherwise not dispute." Marcus, *supra,* at 1614–15. "Beyond that, broad waiver doctrines will tempt parties to press claims of waiver even where chances of success are small, owing to the potential windfall that success would bring." *Id.* at 1615. Courts are thus forced to resolve thorny disputes that drain judicial resources and prolong litigation.

3. Worst of all, broad waiver doctrines "undermine confidence in the privilege by invading initially privileged communications." Marcus, *supra*, at 1615. If any production can unexpectedly result in waiver, clients will be reluctant to disclose potentially damaging information to their attorneys, for fear that this privileged communication will be inadvertently produced. The "strict responsibility" regime thus discourages the full and frank conversations that the privilege is designed to protect. As a result, "[l]itigation costs … rise and judicial efficiency … fall[s] as attorneys attempt to advise clients after receiving only partial information." Spahn, *supra*, at 291.

A law-and-economics analysis likewise suggests that under broad waiver rules, "a rational client will settle for less accurate legal advice," stopping at the point where "the net gains from the legal advice are at their maximum." Baum, *supra*, at 140. This is because, "[w]hile [a higher] amount of information … yields more accurate, and thus more valuable, legal advice, it wipes out a bigger portion of the client's value from the legal advice because the client must spend more on care." *Id*. Consequently, "the amount of information communicated to the lawyer will not be the optimal amount when precaution costs are taken into account." *Id*. The decrease in information is the direct result of broad waiver rules that "promote overexpenditure to avoid a waiver." Marcus, *supra*, at 1613.

The attorney-client privilege ultimately "promote[s] broader public interests in the observance of law and administration of justice." *Upjohn*, 449 U.S. at 389. But broad waiver rules force litigants to consider whether they are rationally obliged to "settle for less accurate legal advice." Baum, *supra*, at 140. Such an incentive

does not serve the "administration of justice." *Upjohn*, 449 U.S. at 389.

B. In 2008, Congress abrogated the rule of "strict responsibility" through the new Rule 502.

The risk of waiver has been heightened by the proliferation of e-discovery, where attorneys must potentially review millions of documents on tight schedules. "Given the scope of modern discovery and the realities of contemporary litigation, … some privileged material is likely to pass through even the most tightly woven screen." *See* Robert P. Mosteller et al., *McCormick on Evidence* § 93 (9th ed. 2025). With dozens of attorneys each reviewing thousands of documents per day, a minimum amount of mistaken privilege decisions becomes inevitable, even where the attorneys exercise appropriate care in their review. For the attorney-client privilege to function in the modern era of e-discovery, protection against inadvertent waiver is necessary, since "the attorney and client must be able to predict with some degree of certainty whether particular discussions will be protected." *Upjohn*, 449 U.S. at 393; *see also id.*

("An uncertain [attorney-client] privilege … is little better than no privilege at all.").

In 2008, to address the drawbacks of the "strict responsibility" regime and protect the privilege, Congress added Rule 502. As the Senate Judiciary Committee explained, the new rule served "to limit the consequences of inadvertent disclosure, thereby relieving litigants of the burden that a single mistake during the discovery process can cost them the protection of a privilege." S. Rep. No. 110-264, at 3 (2008). In the words of the advisory committee, the rule responded to

> the widespread complaint that litigation costs necessary to protect against waiver of attorney-client privilege or work product ha[d] become prohibitive due to the concern that any disclosure (however innocent or minimal) will operate as a subject matter waiver of all protected communications or information. This concern is especially troubling in cases involving electronic discovery.

Fed. R. Evid. 502 advisory committee's note.

Rule 502 provides both a default rule that protects against inadvertent disclosure and a mechanism for parties to contract

around the default rule and provide even greater protections. The default rule provides:

> When made in a federal proceeding or to a federal office or agency, the disclosure [of privileged material] does not operate as a waiver in a federal or state proceeding if:
>
> (1) the disclosure is inadvertent;
>
> (2) the holder of the privilege or protection took reasonable steps to prevent disclosure; and
>
> (3) the holder promptly took reasonable steps to rectify the error[.]

Id. 502(b).

Rule 502(d), which authorizes parties to contract around the default rule, provides: "A federal court may order that the privilege or protection is not waived by disclosure connected with the litigation pending before the court[.]" *Id*. 502(d). This Rule allows parties to stipulate against waiver, which reduces the costs of disclosure and helps avoid dragging courts into waiver-based toothpick wars. *See* Marcus, *supra*, at 1615; *see also* Seth Katsuya Endo, *Contracting for Confidential Discovery*, 53 U.C. Davis L. Rev. 1249, 1262 (2020) (explaining the benefit of protective orders that "protect legitimately

private information while also promoting the efficient exchange of information and an expanded bargaining range for settlement").

Properly interpreted and enforced, Rule 502 assures businesses that they can safely provide sensitive information to their attorneys without the risk that this information will be inadvertently produced and used against them.

II. THE DISTRICT COURT THWARTED THE PLAIN MEANING OF THE PARTIES' AGREEMENT BY MISINTERPRETING STANDARD CONTRACTUAL LANGUAGE USED IN PROTECTIVE ORDERS AND ESI PROTOCOLS.

The district court erred by imposing a contorted reading of the two relevant agreements: the initial ESI protocol of 2023 and the subsequent protective order of 2024. This Court should clarify that the Federal Rules of Evidence do not impose extra hurdles on litigants wishing to contract around the default waiver rules.

The language of both the initial ESI protocol and the subsequent protective order objectively serves to protect privileged documents from disclosure, whether inadvertent or not. The initial ESI protocol approved in 2023 provided that "the production of *any* documents … shall not … constitute a waiver." Pet. App. A1 at 5

(emphasis added). And it provided that "[i]nformation produced in discovery that is protected as privileged … shall be immediately returned." *Id.* The subsequent protective order approved in 2024 added further detail: in the event of an "inadvertent[]" production, the receiving party was bound to comply with the "obligations … set forth in Federal Rule of Civil Procedure 26(b)(5)(B)." *Id.*

Because both the protective order and ESI protocol serve to protect the parties against the risk of inadvertent disclosure, the contract should have been interpreted to protect the privilege against waiver. Yet the district court adopted a strained reading of a different provision to contravene the plain meaning of the agreements. The 2024 protective order contains a savings provision that states: "This provision is not intended to modify whatever procedure may be established in an e-discovery order or agreement that provides for production without prior privilege review." *Id.* The ESI protocol is "an e-discovery order" and thus, by the protective order's plain terms, the protective order cannot modify, much less abrogate, the procedures provided in the ESI protocol.

But the district court misread the savings provision by focusing on the last four words and applying faulty reasoning. The court noted that the protective order does not "modify 'whatever procedure may be established in an e-discovery order or agreement that provides for production *without prior privilege review*.'" *Id.* at 6. Having italicized these four words, the court leapt to the conclusion that only the protective order—and not the ESI protocol—"applies to documents that the producing party reviewed for privilege." *Id.* The district court's reasoning is wrong for two reasons.

First, regardless of whether the ESI protocol provided "for production without prior privilege review," it certainly was "an e-discovery order." Therefore, as Amazon points out in its Petition, the ESI protocol was protected from modification on that ground alone.

Second, the district court's conclusion is based on a logical fallacy. The district court interpreted the protective order as providing that if a previous order concerns production *without* prior review, then this order does not modify it. The district court's conclusion, which it erroneously believed followed from that premise,

can be characterized as: if a previous order concerns production *with* prior review, then this order *does* modify it. This is the fallacy of denying the antecedent: the logical statement "if A, then B," does not mean "if not A, then not B."[1] Even if the savings clause could be interpreted to say that the protective order does not modify procedures established in an e-discovery order that provides for production *without* privilege review (Amazon's Petition explains why that is not a proper reading), it does not follow that e-discovery orders providing for production *with* privilege review are somehow modified. This error alone requires reversal.

Moreover, the ESI protocol *did* provide for production without prior privilege review. The ESI protocol explicitly stated that production did not waive privilege in any case. It made no distinction between productions that followed privilege review and those that

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[1] This principle can be illustrated as follows. The expression "if a fruit is a watermelon, then its exterior is green" does not logically entail that "if a fruit is *not* a watermelon then its exterior is *not* green." Grapes and limes are not watermelons, yet they can have green exteriors.

did not. Therefore, the ESI protocol applies to production with prior privilege review as well as to production without prior privilege review, even under the district court's erroneous interpretation. Accordingly, the protective order did not modify the ESI protocol's procedures for clawing back privileged materials.

The sort of agreement the district court constructed is not a reasonable one. It makes no sense for parties to mention Rule 502(d) in their agreement if 502(b) will apply anyway. This Court should clarify that in construing protective orders, as in construing any contract, courts give effect to the plain meaning of the text. When there are multiple discovery agreements, district courts should read them in harmony. *See* Restatement (Second) of Contracts § 202 (Am. L. Inst. 1981). Here, the ESI protocol and protective order protected against waiver, and the district court's finding to the contrary was error.

III. THE DISTRICT COURT ERRED IN CONSTRUING THE DEFAULT RULE FOR INADVERTENT DISCLOSURE.

Having erroneously determined that the parties' agreements did not apply, the district court applied Rule 502(b)'s default rule. But the district court also applied it incorrectly.

Courts addressing waiver under Rule 502(b) should seek to determine whether the disclosure at issue was inadvertent or calculated. Inadvertent means "unintentional" and "not focusing the mind on a matter." *Inadvertent*, *Merriam-Webster*.[2] Other popular dictionaries define inadvertent as "not attentive; heedless" and "characterized by lack of attention." *Inadvertent*, *Dictionary.com*.[3] Put simply, an inadvertent action "is one that you do without realizing what you are doing." *Inadvertent*, *Collins Dictionary*.[4]

One is hard pressed to think of a better example of an inadvertent act than a fatigued document reviewer clicking the "not

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[2] https://www.merriam-webster.com/dictionary/inadvertent.
[3] https://www.dictionary.com/browse/inadvertent.
[4] https://www.collinsdictionary.com/us/dictionary/english/inadvertent.

privileged" button when reviewing an obviously privileged document while distracted by other thoughts. Neither the document reviewer, nor the supervising attorneys, nor the client *intended* to disclose a privileged communication—it was produced by mistake. Even if the reviewer meant to click the button—*i.e.*, the mouse obeyed his command—the decision to click "not privileged" was clearly an oversight. *Cf.* Tex. R. Civ. P. 193.7 cmt. 4 ("The focus is on the intent to waive the privilege, not the intent to produce the material or information.").

Courts have thus correctly declined to find waiver for "intentional, yet inadvertent" disclosures. *Oppliger v. United States*, 2010 WL 503042, at *5–6 (D. Neb. Feb. 8, 2010). Other mistakes, such as a reviewer's failure to recognize that a document is privileged, may also occur in large-scale discovery with frustrating regularity, but "[t]he nature of the mistake in disclosing a document is not limited by the rules." *King Pharm., Inc. v. Purdue Pharma, L.P.*, 2010 WL 2243872, at *2 (W.D. Va. June 2, 2010) (holding that

Rule 502(b) "logically ought to include mistaken redaction, as well as other types of mistakes that result in disclosure").

By contrast, a disclosure is not inadvertent when the producing party makes a calculated decision to produce the document for a litigation advantage. In *T&W Holding Co., LLC v. City of Kemah*, for example, the producing party, Kemah, "represented that [the produced] documents were of particular importance." 641 F. Supp. 3d 378, 383 (S.D. Tex. 2022). Because "Kemah's lawyers made a conscious decision to identify certain documents as those they may rely on," the court held that "they cannot now run away from that decision claiming mistake or inadvertence." *Id.* Far from inadvertent, the disclosure was calculated.

Rule 502(b)'s focus on "reasonable steps to prevent disclosure" confirms that the rule is not meant to punish innocent mistakes. Fed. R. Evid. 502(b)(2). Whereas a party that produces documents without reviewing them may be unable to claim inadvertence, a party that implemented a process designed to identify and withhold privileged documents can plausibly argue that the disclosure

occurred despite its best efforts to protect the privilege—*i.e.*, that it was inadvertent.

Recognizing the burdens of modern e-discovery, the advisory committee noted that courts should take into account the "number of documents to be reviewed" by the producing party. *Id.* 502 advisory committee's note; *see also King*, 2010 WL 2243872, at *2 ("The very limited disclosure here, in light of the volume of production, is evidence of the reasonable steps taken to prevent disclosure."). It is understandable, and likely unavoidable, that a small number of privileged documents will slip through the net when the producing party is reviewing millions of documents.

Finally, the inquiry into whether the producing party "promptly" took "reasonable steps to rectify the error" also shows that Congress's focus was on innocent mistakes. Fed. R. Evid. 502(b)(3). A party that inadvertently produced a privileged document is far more likely to promptly claw back that document upon learning of the disclosure than a party that made a calculated decision to disclose it.

Amazon took reasonable precautions to prevent waiver and promptly attempted to claw back the privileged documents once it learned that they had been produced. Pet. at 32. There is no evidence that Amazon's production was calculated to create a litigation advantage. On the contrary, this is a classic case of human error during an enormous e-discovery effort. The district court did not find that Amazon's efforts to protect its privileged documents were "unreasonable," nor could it have.

The district court nevertheless concluded that disclosure was "intentional" under Rule 502(a) and not "inadvertent" under Rule 502(b), because Amazon initially marked the documents as privileged, but then "downgraded" them in a subsequent review. Pet. App. A1 at 10–11. To reach that conclusion, the court applied a cramped definition of inadvertence that would cover only computer errors—not human errors—and it declined to consider the other "reasonableness" factors in Rule 502(b). The district court thus effectively applied the old "strict responsibility" regime to punish Amazon for what was a mistake, not a calculated choice. If this

decision is allowed to stand, businesses and other entities seeking to protect privileged material will have to account for the likelihood that their privileged communications will be disclosed despite their best efforts, chilling full and frank communications with counsel and driving up litigation costs.

To prevent a return to the "strict responsibility" regime that Congress supplanted through Rule 502, this Court should hold that innocent mistakes in the document review process do not result in waiver under Rule 502(b) when the producing party has a reasonable process for reviewing privileged documents and promptly acts to claw back the privileged document once it becomes aware of the disclosure.

CONCLUSION

Amici respectfully request that this Court GRANT mandamus and REVERSE the district court's order.

Dated: May 19, 2025

Respectfully submitted,

/s/ *Robert E. Dunn*
Robert E. Dunn

Counsel for Amici Curiae Chamber of Commerce of the United States of America, California Chamber of Commerce, and Business Roundtable

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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Respectfully submitted,

/s/ *Robert E. Dunn*
Robert E. Dunn

Counsel for Amici Curiae Chamber of Commerce of the United States of America, California Chamber of Commerce, and Business Roundtable